

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Amadee Bility	Team: Squad #03	CCRB Case #: 202208201	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/26/2022 6:10 PM	Location of Incident: 456 East 149th Street	18 Mo. SOL 5/26/2024	Precinct: 40		
Date/Time CV Reported Sat, 11/26/2022 7:12 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 11/30/2022 6:42 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Nicholas Roveto	21509	968108	040 PCT
2. PO Ryan Hennessy	13816	971991	040 PCT
3. SGT Mayky Santos	02317	944982	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO Ryan Hennessy	Abuse: Police Officer Ryan Hennessy stopped § 87(2)(b)	
B . PO Nicholas Roveto	Abuse: Police Officer Nicholas Roveto stopped § 87(2)(b)	
C . SGT Mayky Santos	Abuse: Sergeant Mayky Santos stopped § 87(2)(b)	
D . PO Ryan Hennessy	Abuse: Police Officer Ryan Hennessy frisked § 87(2)(b)	
E . PO Ryan Hennessy	Abuse: Police Officer Ryan Hennessy refused to provide his name to § 87(2)(b)	
F . PO Ryan Hennessy	Abuse: Police Officer Ryan Hennessy refused to provide his shield number to § 87(2)(b)	
G . PO Ryan Hennessy	Abuse: Police Officer Ryan Hennessy failed to provide § 87(2)(b) with a business card.	
H . PO Ryan Hennessy	Abuse: Police Officer Ryan Hennessy improperly used his body-worn camera.	
I . PO Nicholas Roveto	Abuse: Police Officer Nicholas Roveto improperly used his body-worn camera.	
J . SGT Mayky Santos	Abuse: Sergeant Mayky Santos improperly used his body-worn camera.	

Case Summary

On November 26, 2022, § 87(2)(b) filed this complaint over the phone with IAB generating IAB Log § 87(2)(b). The CCRB subsequently received this complaint on November 30, 2022.

§ 87(2)(b) alleged that on November 26, 2022, at about 6:10 p.m., in front of 456 East 149th Street in the Bronx, Police Officer Ryan Hennessy, Police Officer Nicholas Roveto, and Sergeant Mayky Santos, assigned to the 40th Precinct, stopped him (**Allegations A-C: Abuse of Authority:** § 87(2)(g) PO Hennessy frisked § 87(2)(b) (**Allegation D: Abuse of Authority:** § 87(2)(g) He also alleged that he asked PO Hennessy for his name and shield number which was ignored (**Allegations E-F: Abuse of Authority:** § 87(2)(g) PO Hennessy did not offer a business card at the end of the interaction (**Allegation G: Abuse of Authority:** § 87(2)(g) Additionally, all three officers failed to activate their Body-Worn-Cameras (BWC) (**Allegations H-J: Abuse of Authority:** § 87(2)(g) No arrest or summons resulted from this incident.

There is no known video evidence of this incident. The officers improperly failed to activate their BWC during the encounter (see allegations H-J). BWC video was received which captured § 87(2)(b) speaking to uninvolved officers about the incident after he filed his complaint with IAB (**Board Review 13**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Ryan Hennessy stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Nicholas Roveto stopped § 87(2)(b)

Allegation (C) Abuse of Authority: Sergeant Mayky Santos stopped § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Ryan Hennessy frisked § 87(2)(b)

§ 87(2)(b) testified that on November 26, 2022, he entered the liquor store, located at 456 East 149th Street in the Bronx, to make a purchase. He had just come back from a GameStop video game store and was wearing a grey hoodie. He was not involved in any disputes while he made his purchases. When he exited the store, a police vehicle drove up in front of the liquor store and four officers exited the vehicle. PO Hennessy approached him smiling, and without saying anything, frisked him. PO Hennessy ran his hands over his cross-body bag which had his games from GameStop and his liquor store purchase. He was not under the influence of any substances. He had his keys, phone, and money in his pockets but could not remember which pockets they were in. He asked PO Hennessy why he was being frisked. PO Hennessy remarked something along the lines of seeing him leave GameStop “funny.” The frisk lasted 15 to 20 seconds. He asked PO Hennessy for his name and badge number, but PO Hennessy smiled at him and returned to the rear passenger side of the police vehicle. The other officers did not interact with him (**Board Review 1**).

While § 87(2)(b) alleged that there were four officers present, the officers’ testimony revealed that only three officers were present during the encounter. No additional officers were identified.

PO Hennessy testified that on November 26, 2022, he was working with Sgt. Santos and PO Roveto. He and the other officers observed § 87(2)(b) walking eastbound with a “heavily weighted” fanny pack across the right side of his chest. He first testified he believed the object in the fanny pack was indicative of a firearm because the fanny pack was heavily weighed down. When asked what shape the object was inside the fanny pack he testified, “heavily weighted, obviously a firearm is more or less an “L-shape.” He could not recall the size of the object. When asked to specify if he saw an “L-shape,” he testified, “No, I’m saying that the heavily weighted object which I believed was a firearm, was indicative of a firearm to me.” He also could not recall if the fanny pack was weighed down in any particular direction (**Board Review 2**).

Based on his training and experience as an officer of two years, he did not believe that the object in the fanny pack was something other than a weapon. § 87(2)(b) did not have anything in his hand such as a phone. He observed § 87(2)(b) look in the direction of their vehicle and believed he was looking at them because their windows were rolled down and they were in uniform. § 87(2)(b) then entered the furniture store located at 452 E 149th Street. The driver of the police vehicle made a U-turn to be on the same side of the street as § 87(2)(b) in order to further observe § 87(2)(b) (**Board Review 2**).

§ 87(2)(b) walked in the direction of the rear of the store looking over his shoulder in the direction of the officers. PO Hennessy believed § 87(2)(b) could have been concealing something from his view. § 87(2)(b) exited the furniture store within a minute of entering without speaking to anyone or making a purchase. When § 87(2)(b) exited the store, he shifted his fanny pack from across the right side of his chest to under his right arm and exited the store. He did not have a reason to believe § 87(2)(b) shifted his fanny pack for any reason such as comfortability. He believed it was done to conceal a weapon. He testified, “that is not a normal behavior. I think when you’re shifting it and putting it under your arm that you’re concealing that. Concealing something from me.” Then, § 87(2)(b) entered the liquor store at 456 E 149th Street, which is two doors down. He did not recall how long § 87(2)(b) was in the liquor store but observed him in total for four minutes. While in the store, § 87(2)(b) spoke with two customers and did not make a purchase. He did not recall if § 87(2)(b) touched his fanny pack in the liquor store (**Board Review 2**).

When he exited the vehicle, he identified himself as a police officer to § 87(2)(b) and said, “Stop,” to get his attention.” § 87(2)(b) stopped, and he began to frisk him. He did not recall what he told § 87(2)(b) as to why he stopped him. Upon the frisk of the fanny pack, he felt two rectangular shaped objects and determined that they were not a firearm. His supervisor, Sgt. Santos did not give him orders throughout the incident and PO Roveto did not participate in the interaction as well. The combination of the weighted fanny pack, § 87(2)(b) entering the furniture store upon noticing the officers, entering the liquor store without making a purchase or speaking with people, to avoid them, and § 87(2)(b) shifting the fanny pack was suspicious to him. He could not recall who made the decision to stop § 87(2)(b) or what, if any conversation took place between him and the other officers prior to exiting the vehicle (**Board Review 2**).

PO Roveto testified that on November 26, 2022, at 6pm he and his partners were in an unmarked car opposite 456 East 149th Street in the Bronx addressing conditions. At the time of the incident, there was still daylight. He and PO Hennessy observed § 87(2)(b) on the other side of the street with a weighed-down fanny pack. He could not recall any other things about the fanny pack that drew his suspicion. He could not determine the size or shape of the object making the bulge from the vehicle. He believed it could have been a weapon because he has often stopped people on the streets with firearms in their fanny packs. When § 87(2)(b) went into the liquor store, it was a collective decision to make a U-turn for further observation. About a minute after observing § 87(2)(b) in the liquor store, PO Hennessy and Sgt. Santos decided to exit the vehicle to get a closer look at § 87(2)(b). He decided to stay in the car after PO Hennessy and Sgt. Santos left the vehicle because “a lot of the times the driver will stay in the car.” He did not observe a frisk or see or hear a conversation (**Board Review 3**).

Sgt. Santos testified that on November 26, 2022, he was on patrol addressing quality of life conditions with PO Hennessy and PO Roveto in their unmarked vehicle. He was in the front passenger seat; PO Hennessy was in the rear and PO Roveto was the operator. They were opposite the liquor store when he observed § 87(2)(b) walking on the opposite side of the street. It was

daylight outside and the sidewalks had pedestrian traffic. § 87(2)(b) was about three car lengths away from them. § 87(2)(b) made eye contact with the vehicle the officers were in and repeatedly looked back at the officers as he entered the furniture store. He believed that to be suspicious because § 87(2)(b) could have been hiding something from the officers after making eye contact with them; especially because § 87(2)(b) did not speak to anyone inside the furniture store. He could not remember if the windows were rolled down in the police vehicle. § 87(2)(b) also had a fanny pack in the center of his chest. § 87(2)(b) was inside the furniture store for about one minute then went to the liquor store. When § 87(2)(b) exited the furniture store, he looked around at the officers again. This made Sgt. Santos believe further that § 87(2)(b) was hiding something. He did not know whose decision it was to make a U-turn, but no discussion was made to further observe § 87(2)(b). After the U-turn was made, he observed § 87(2)(b) speak with two males inside of the store and exchange papers. The exchange of papers could have been related to drugs, so he decided to get out of the vehicle along with PO Hennessy. Additionally, § 87(2)(b) looked back at them again. He considered § 87(2)(b) looking back at them continuously to be evasive (**Board Review 4**).

Sgt. Santos testified that after three minutes of observing § 87(2)(b) he exited the vehicle with PO Hennessy. His intention was to further observe the papers § 87(2)(b) was exchanging with the other men in the liquor store, not to engage in a stop or conversation with § 87(2)(b). As they exited the vehicle, § 87(2)(b) walked out of the liquor store and walked towards them. The fanny pack had moved to from the center of his chest to under his arm. The fanny pack did not alert his suspicions until that moment. He believed that § 87(2)(b) was trying to hide something in his fanny pack or trying to be evasive. He said, "How ya doing?" and stood behind PO Hennessy. It was suspicious to him that § 87(2)(b) moved the fanny pack after making eye contact with the officers. He did not see what PO Hennessy was doing and PO Roveto remained inside of the vehicle until the end of the stop. Sgt. Santos did not find out what the papers being exchanged were. After the encounter, PO Hennessy told him that he conducted a frisk but did not believe the items in the fanny pack were weapons. At the time of the incident, Sgt. Santos did not see a frisk take place. He did not remember if PO Hennessy said what he felt through the fanny pack. Based on his observation of § 87(2)(b) shifting the fanny pack and looking back at the officers, it was indicative of something suspicious. However, he did not have a clear view of the fanny pack to determine if it was weighed down or had any particular shape (**Board Review 4**).

According to People v Debour, 40 N.Y.2d 210, officers must have reasonable suspicion that criminal activity is present in order to stop an individual. Behavior that is susceptible of innocent as well as culpable behavior does not justify a forcible stop. Additionally, the location of a bulge is noteworthy because a pocket bulge can be caused by a number of innocuous objects. However, a waistband bulge is a telltale sign of a weapon (**Board Review 6**).

According to People v Thorne, 207 A.D.3d 73, the court found that even while walking at a fast pace attempting to hide their face from the officers, "such equivocal behavior was just as susceptible to an innocent interpretation and may not increase the level of suspicion so as to justify a forcible stop." (**Board Review 12**)

It is undisputed that the officers stopped and frisked § 87(2)(b) § 87(2)(g).
§ 87(2)(b) PO Hennessy considered § 87(2)(b) looking back at them to be evasive and indicative of criminal activity as opposed to an innocuous action such as, remaining vigilant when he noticed a group of men staring at him in an unmarked car at night, not wanting a police interaction or not seeing anything in an establishment that he wanted to buy. Additionally, PO Hennessy observed that § 87(2)(b) fanny bag was

heavily weighted and was unable to provide any further description of the object that would lead to the reasonable inference that the bag contained a weapon, as opposed to any other innocuous object (here, video games as reported by § 87(2)(b)). Similarly, Sgt. Santos stated that he could not determine the size or shape of the object in § 87(2)(b)'s fanny pack to confidently say that there could have been a weapon. Sgt. Santos' suspicion of the bag was that it was moved from the center of his chest to under his arm. Sgt. Santos raised the observation that § 87(2)(b) had exchanged papers inside the liquor store which may have been related to narcotics activity. Sgt. Santos did not add any specific information to support the theory that this was related to narcotics, did not report taking any further actions in regards to this observation, and no other officer testified to seeing this. Additionally, PO Roveto could not determine anything identifiable about the object in the fanny pack.

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Ryan Hennessy refused to provide his name to § 87(2)(b).

Allegation (F) Abuse of Authority: Police Officer Ryan Hennessy refused to provide his shield number to § 87(2)(b).

Allegation (G) Abuse of Authority: Police Officer Ryan Hennessy failed to provide § 87(2)(b) with a business card.

Allegation (H) Abuse of Authority: Police Officer Ryan Hennessy improperly used his body-worn camera.

Allegation (I) Abuse of Authority: Police Officer Nicholas Roveto improperly used his body-worn camera.

Allegation (J) Abuse of Authority: Sergeant Mavky Santos improperly used his body-worn camera.

§ 87(2)(b) alleged that he asked PO Hennessy for his name and badge number, but PO Hennessy smiled at him and returned to the rear passenger side of the police vehicle. The other officers did not interact with him. He was not offered a business card by any of the officers, and he did not ask for business cards (**Board Review 1**).

PO Hennessy testified that § 87(2)(b) was belligerent in that he was yelling and cursing, but he could not remember what § 87(2)(b) was yelling and cursing about. Therefore, he did not offer § 87(2)(b) a business card because § 87(2)(b)'s yelling made him concerned for his safety. He did not recall if § 87(2)(b) asked him for his name and shield number. His concern for his safety and other officers' safety due to § 87(2)(b)'s yelling, and tactics, also prevented him from activating his BWC prior to stopping § 87(2)(b) and during the encounter (**Board Review 2**).

PO Roveto testified that he did not see or hear § 87(2)(b) ask for the names and shields of Sgt. Santos or PO Hennessy. He also did not hear if there was yelling from the officers or § 87(2)(b). After half a minute of the officers exiting the car, he believed that they were taking a long time and decided to exit the vehicle too. Though there was no RTKA card given, one would have to be given

by the officer conducting the stop and frisk. By the time he got to the officers, they were walking back to the vehicle. He did not turn on his BWC camera because he believed the incident was over when PO Hennessy and Sgt. Santos walked back to the vehicle, and he did not have any interaction with § 87(2)(b). His intention in exiting the vehicle was to see if everything was okay with his partners. There was no conversation between the officers about what occurred (**Board Review 3**).

Sgt. Santos testified that § 87(2)(b) appeared drunk due to his tone, inflections in his voice, and he did not make sense. He also described § 87(2)(b) as belligerent, combative, and hostile but he could not remember what made him describe § 87(2)(b) this way other than to say that § 87(2)(b) did not make sense. He also did not smell or see alcohol on § 87(2)(b). After the stop was conducted, § 87(2)(b) asked the officers something along the lines of “Can I have your names?” Sgt. Santos provided his name. PO Hennessy did not refuse to provide his name. He could not recall if § 87(2)(b) asked for badge numbers. An RTKA card was not issued to § 87(2)(b) because it slipped his mind but any of the officers present could have given § 87(2)(b) an RTKA card. His individual intention was to further observe the papers the men were exchanging. His intentions were not to have a conversation, a stop or inquiry, which is why his BWC was not activated (**Board Review 4**).

According to NYPD Patrol Guide 212-123, officers must activate BWC prior to engaging in any police actions, including self-initiated investigative activity which include Investigative Encounters. Officers must also activate their BWC to record any interactions that escalate to become adversarial or may hold evidentiary value. Officers must activate their BWC as soon as it is feasibly and safe to do so after taking necessary action to preserve human health and safety, when an unanticipated or exigent occurrence takes place (**Board Review 7**).

According to NYPD Administrative Guide 304-11, officers must offer a Right to Know Act Business Card after they performed a law enforcement activity, including stops and frisks of an individual. Officers are not required to provide a business card in cases where a summons is issued or an arrest is made, or where exigent circumstances are present (physical resistance, flight, imminent danger of physical injury or damage to property, or other factors make such procedure impractical). (**Board Review 8**).

§ 87(2)(b) alleged that he asked PO Hennessy for his name and badge number after he frisked his fanny pack. PO Hennessy testified that he could not recall such a request being made. Sgt. Santos could not recall if the request for badge numbers were made but he verbally provided his own name and shield number. Additionally, PO Roveto did not hear the request for names and badge numbers because he said he was in the vehicle. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) also alleged that he was not offered an RTKA card after his encounter with PO Hennessy. The allegation is pled to PO Hennessy due to his involvement in the stop and frisk and the lack of the involvement on the parts of Sgt. Santos and PO Roveto. PO Hennessy testified that he could not issue an RTKA card to § 87(2)(b) because § 87(2)(b) was yelling at him which made him concerned for his safety. Sgt. Santos provided consistent testimony that § 87(2)(b) was belligerent, he could not explain how, other than his not making sense while he spoke with them. There is no video or independent evidence to corroborate that officers’ testimony about § 87(2)(b) demeanor during the stop. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

All three officers testified to making various observations of § 87(2)(b) which led them to believe § 87(2)(b) was armed or otherwise involved in illegal activity. Following from this, the Patrol Guide required them to activate their BWC prior to taking further action to investigate the matter. PO Hennessy and Sgt. Santos described that § 87(2)(b) was yelling and belligerent during the encounter, another factor requiring the activation of BWC, per the Patrol Guide. While the activation of BWC is required prior to engaging in an enforcement action, the Patrol Guide also specifies that the BWC should be activated when feasible in situations when pre-emptive activation is not possible. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 9**).
- PO Hennessy has been a member of service for two years and has been a subject in nine CCRB complaints and 53 allegations, none of which have been substantiated. PO Hennessy's CCRB history contains multiple complaints containing stop, frisk, and failure to provide RTKA business cards.
- Sgt. Santos has been a member of service for 16 years and has been a subject in 21 CCRB complaints and 60 allegations, none of which have been substantiated. § 87(2)(g)
- PO Roveto has been a member of service for four years and has been a subject in 10 CCRB complaints and 39 allegations, none of which have been substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of March 8, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (**Board Review 10**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

Squad: 3

Investigator: Amadee Bility
Signature

Investigator Amadee Bility
Print Title & Name

11/06/2023
Date

Squad Leader: Rolando Vasquez IM Rolando Vasquez 11/6/2023
Signature Print Title & Name Date